

# POSTCONVICTION RELIEF POLICY FOR THE OFFICE OF THE STATE PUBLIC DEFENDER

Pursuant to the Amendments enacted by the Legislature (attached), the following procedure must be followed on postconviction relief matters.

Unless a petitioner or appellant is appointed a public defender by a district court judge for the reasons set forth in Mont. Code Ann. § 46-8-104(1)(e) and (2), the Office of the State Public Defender will only appoint counsel once an evidentiary hearing is determined necessary. If it is determined that counsel is to be assigned, the Regional Public Defender Office in which the case arises must:

- ✓ Notify the Appellate Defender's Office;
- ✓ Complete the Postconviction Intake Form and email or mail to the Office of the Appellate Defender. (If sending by email please send to [sbraden@mt.gov](mailto:sbraden@mt.gov)).

Postconviction cases **must** be discussed with the Appellate Defender before the assignment of a contract or conflict attorney. This also applies if a district court judge appoints the Office of the State Public Defender to represent a client on postconviction prior to the setting of an evidentiary hearing.

Attorneys assigned a postconviction case will submit claims for payment to the Appellate Defender Office, P.O. Box 200145, Helena, MT 59620-0145.. It is also important to remain in contact with the Appellate Defender Office for pre-approval on miscellaneous costs associated with the case.

If you have any questions regarding this procedure, please call either Jim Wheelis, Chief Appellate Defender, or his paralegal, Sarah Braden, at 841-2001. They will be able to answer any questions you may have.

Section 46-8-104, MCA, is amended to read:

“46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(A) THE DISTRICT COURT DETERMINES THAT A HEARING ON THE PETITION IS REQUIRED PURSUANT TO 46-21-201;

(B) THE STATE PUBLIC DEFENDER'S OFFICE REQUESTS APPOINTMENT OF A PUBLIC DEFENDER AND DEMONSTRATES GOOD CAUSE FOR THE APPOINTMENT;

(C) a statute specifically mandates the appointment of counsel;

(D) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana Constitution; or

(E) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, “extraordinary circumstances” includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing English.”